* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : January 24, 2007
Date of Decision : February 6, 2007

\+ Writ Petition (Civil) No. 15002 of 2006

HIRDAYAPAL SINGH ..... PETITIONER
Through : Mr. R. K. Saini, Advocate

versus

DDA ..... RESPONDENT
Through: Mr. C. Mohan Rao, Advocate

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

: Dr. S. Muralidhar, J.

1. The petitioner registered himself with the Delhi Development Authority (DDA) under the New Pattern Registration Scheme 1979 for allotment of an MIG flat. The petitioner at the time of registration gave his address as 1970/26, Bhagwati Street, Chowk Baba Sahib, Amritsar.

2. In 1993 the petitioner changed his residence to 81, Power Colony, Majitha Road, Amritsar and sent a letter dated 4.11.1993 to the DDA informing it of the change of address. The petitioner in the same letter dated 4.11.1993 also indicated his permanent address, which was that of his parent's at 6- Sarhadi Complex, Dolly Appartment, Oppsite Canal Office, Railway Road, Amritsar-143001.

3. It is not in dispute that the petitioner's allotment matured sometime in the year 1999-2000. It is the case of the Delhi Development Authority that the allotment letter was sent to his changed address at 81, Power Colony, Majitha Road, Amritsar and that the said allotment letter was received back undelivered. The DDA does not deny in its reply affidavit dated 19.12.2006 that it did not send the allotment letter to the petitioner's permanent address which was that of his parents. The stand taken by the DDA in its counter affidavit is that it was under no obligation to send the allotment letter to the permanent address of the petitioner and that the consequential cancellation of allotment cannot be faulted with.

4. The petitioner sent a representation to the DDA against the cancellation of allotment on 12.9.2005 but this was rejected by a cryptic letter dated 30.4.2006 wherein the DDA informed the

petitioner that his request could not be acceded to and that he should apply for refund of the registration money along with the original relevant documents. This has led to the petitioner filing the present writ petition.

5. The short question here is whether the DDA was justified in cancelling the allotment in the facts and circumstances of the case. The records of the case with the DDA have been perused. It is clear that DDA made a note of the change of address intimated to it by the petitioner's letter dated 4.11.1993. The DDA therefore took note not only of the present changed address of the petitioner as indicated in that letter but also the permanent address indicated therein. Apart from stating that it was under no obligation to send such allotment letter to the permanent address, there is no other explanation given by the DDA as to why it could not have sent the allotment letter to the permanent address as well. To the Court it appears that the intimation of allotment ought to have been set not only to the present address available on file but, if the allotment letter was returned undelivered, to the permanent address as well. From the point of view of the DDA this would have not only cost nothing to the DDA but it would have ensured that the DDA has made every possible effort to reach the allotment letter to the petitioner. From the petitioner's

perspective, despite having intimated to the DDA his permanent residence, its failure to send the allotment letter there, meant that it resulted in the cancellation of his allotment. The loss to the petitioner of an allotment, for which he had been waiting since 1979, would indeed be far greater in such a situation. It must be realised that as a condition of eligibility for allotment of a flat under the NPRS 1979 an applicant should not own any other permanent residence. It is not difficult to imagine that persons who do not own premises in this city are quite likely to rent a residence and also periodically shift such residence taken on rent. Therefore while it is certainly the obligation of such applicant to inform the DDA of the change of address, there is also a corresponding obligation of the DDA to attempt to send the allotment letter to every possible address of the applicant that has been intimated to it and is available on its records.

6. On the facts of the present case the DDA certainly did not send the allotment letter to the addresses of the applicant/ petitioner available with it on its records. Its failure to send the allotment letter to the petitioner's permanent address, in the facts and circumstances of the case, cannot be justified. Accordingly the consequential cancellation of the allotment also cannot be sustained in law. It is accordingly held that the DDA's cancellation of the petitioners

allotment was, in the circumstances, not justified in law and that the petitioner would be entitled to all consequential relief's flowing from the wrongful cancellation of this allotment.

7. The Court's attention has been drawn to the policy decision dated 20.12.2002 of the DDA in cases where allotment letter were sent to the wrong address. Paras 2 and 3 of the said policy decision read as under:

> "2. At present the policy of DDA is to charge the old cost in cases of wrong address but 7% compounded interest is charged on the unpaid amount. Since the allottee did not receive the allotment cum demand letter, he/she protests against charging of any such interest since it was the fault of the DDA.
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> 3. Now the proposal is to charge only the cost of the allotted flat in cases where demand letter has been sent at wrong address. In case the original allotted flat has been cancelled and some other flat is to be given then old cost will mean charging the same plinth area rate of construction and same land rate

> prevailing at the time of original allotment. Besides since there is a financial loss to DDA, responsibility will be fixed of the concerned officials."

This decision would equally apply where the DDA has not sent the allotment letter to the address available with it on its record. The above policy decision is consistent with the decision of this Court in ***T.R.S Vardhan vs. DDA*** (C.W. No. 203/95, decided on November 6, 1995), ***Ashok Kumar Jain vs. DDA*** (C.W. 2152/98, decided on August 12, 1999), ***DDA vs. Japal Singh*** (L.P.A. No. 26/2000, decided on August 10, 2000), ***Mrinal Kanti Ghosh vs. DDA*** (C.W. No. 2558/2000, decided on August 17, 2000) and ***Satish Kumar Nayar vs. DDA*** 109 (2004) DLT 946.

8. Therefore the writ petition is allowed and the following directions are hereby issued to the DDA:

> A. The DDA will, within four weeks from today and not later than 5-3-2007, issue an allotment-cum-demand letter to the petitioner of a flat at the same locality and of the same size and charge the petitioner the cost which was applicable in the year when the allotment was made, in

accordance with the policy decision dated 20.12.2002.

B. Since the cancellation of the allotment is illegal, the petitioner will not be required to pay any restoration charges.

C. After the petitioner completes all the formalities and makes the payment as demanded, the DDA will hand over possession of the flat to the petitioner within a further period of four weeks thereafter.

9. With the above directions the writ petition is allowed with no orders as to costs. These applications are disposed of.

Sd/-
S.MURALIDHAR, J.

February 6, 2007
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